

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Tribal Welfare – West Godavari District –Revision Petition filed under section 6 of A.P.S.A.L.T.R, 1959 by Sri Tamballa Venkateswara Rao & 4 others R/o P.Ankampalem, Jeelugumilli (M), West Godavari District- against the orders of the Agent to Government, Eluru in S.R.A No.3/2007 (F2) dated:21-06-2008 - Allowed - Orders – Issued.

SOCIAL WELFARE (LTR-1) DEPARTMENT

G.O.Ms.No. 57

Dated:20-07-2010.

Read the following:

1. From Sri Dhananjaya, counsel for the Revision Petitioners, dt:30-6-2008.
2. Government Memo No:5561/LTR. 1/2008-1 & 2, dt:21-7-2008.
3. From the Collector, West Godavari, Eluru in ROC No.F4/7645/2008, dt: 9-12-2008.
4. Government Letter 5561/LTR. 1/2008, dt:2-9-2009 and 6-3-2010.

ORDER:

In the reference 1st read above Sri Tamballa Venkateswara Rao & 4 others have filed the revision petition along with stay petition before the Government against the Order of Additional Agent to Government, Eluru, West Godavari in S.R.A No.3/2007 (F2) dt:21-06-2008 in respect of land in R.S. No.39 to an extent of acres 8.64 cents and in R.S. No.40 to an extent of Acres 25.17 cents (Total Acres:33.81 cents) situated at P.Narayanapuram (v) Jeelugimilli (M) West Godavari District. The main grounds of the appellant in the Revision Petition among others are as given below:-

- i. That the petitioners 3 to 5 are the absolute owners of the petition schedule land as such entitled to a notice before initiation of proceedings by the Spl. Deputy Collector (TW) Polavaram basing on the complaint of the 3rd respondent (land owner).
- ii. The Appellate Authority ought to have given an opportunity to the petitioners 3 to 5 being the owners of the land before conducting an inquiry as the petitioner 3 to 5 are entitled to a notice as per law.
- iii. The Appellate Authority ought to have seen that burden of proof heavily rests on the persons who allege that the petitioners 3 to 5 made transfer of the scheduled land in favour of petitioners 1 and 2 to substantiate the allegations that there is a transaction in contravention of the provisions under statute, which we could not be discharged in the instant case.
- iv. The Appellate Authority erred in passing the impugned order without conducting a proper inquiry being quasi judicial to go into the allegations made by the 3rd respondent to give proper opportunity to the petitioners.
- v. The Appellate Authority ought to have seen that the petitioner 1 and 2 are only farm servants who are working under petitioner 3 to 5 as such they have no interest to respond to the alleged notices issued to them under Form-E, which cannot be a ground to pass orders against the petitioners 3 to 5 affecting their rights.
- vi. The Appellate Authority ought to have seen that the very same the authority passed an order in S.R.No.161/2007 dt:15-4-2008 on a complaint made by the 3rd respondent (Tahsildar) and another against the 1st petitioner and the 5th petitioner with the same set of allegations made in the present complaint, where it was held that these petitioners have not contravened any provisions under statute, which itself sufficient to hold that the present proceedings are nothing but harassment.
- vii. The Appellate Authority erred in rejecting the order in S.R.No.377/90 to 393/90, dated 20-10-1990 on the ground that the order is not visible.
- viii. The Appellate Authority ought to have called for the records, if the order is not legible instead of rejecting the same or in alternative, he should have directed the parties to give a legible copy enable him to pass appropriate order.

2. The brief history of the case is that Sri. M.Sankara Rao, Secretary, Integrated Tribal (Education & Rural) Development Society, Tapassivarigudem Village of Jeelugumilli Mandal filed a complaint against Sri Thamballa Venkateswara Rao, (Non Tribe) R/o P.Ankampalem Village, Jeelugumilli (M) alleging that he is enjoying the land in R.S.Nos.39 & 40 an extent of Acres 8.64 cents and Acres 25.17 cents respectively which was got registered after the enforcement of Regulation 1/70 and prayed the lower court (i.e) Special Deputy Collector (TW), Polavaram to eject him and assign the land to tribes. The Special Deputy Tahasildar (TW) Polavaram has also filed complaint under section 3(2) (a) of the APSALT Regulation 1/59 as amended by Regulation 1/70 on the above lands is in possession and enjoyment of Sri Thamballa Venkateswara Rao and others R/o P.Ankampalem village of Jeelugumilli (M), who are non – tribals, in contravention of sub-section (1) of Sub Section 3 of A.P.Schedule Areas Land Transfer Regulation 1/1959 as amended by Regulation 1/70 and requested that the said lands be taken into possession after ejecting respondents (revision Petitioners), declaring that the transactions is null and void under the provisions of the said regulation and ordered to be assigned to eligible land less poor tribals. The Special Deputy Tahasildar (TW) Polavaram inspected the lands in R.S.No.39 and 40 of P.Narayanapuram (V) and reported that the land is in the possession and enjoyment of Sri Pilli Edukondalu, Sri Thamballa Venkateswara Rao and two others (non tribals) on lease basis for last two years. Though the lands are belonging to Samayamanthula Krishna Rao and Samayamanthula Satyanarayana who are residents of Kamayyapalem (V) of Jeelugimilli (M), Sri Pilli Edukondalu is cultivating an extent of Acres 25.17 cts in R.S No.40 and similarly Sri Thamballa Venkateswara Rao, Nune Chandra Rao, Manike Venkata Rao and Muvva Ramakrishna Rao are cultivating an extent of Acres 8.64 cents in R.S.No.39 of P.Narayanapuram (V) of Jeelugimilli (M) on lease basis though the lands belong to Samayamanthula Krishna Rao and other (non-tribe) of Kamayyapalem (V) of Jeelugumilli (M).

3. Finally, the Special Deputy Collector (TW), Polavaram concluded that the land was given on lease to the respondents (i.e.T.Venkateswara Rao & Pilli Edukondalu) by violation of provisions of Andhra Pradesh Scheduled Areas Land Transfer Regulation 1 of 1959 as amended by Regulation 1/1970 and allowed the petition filed by the Special Deputy Tahasildar (TW), Polavaram and passed ejectment order against the respondents (revision petitioners) vide S.R.No.67/2006, dated 29-11-2006.

4. Aggrieved by the orders of the Special Deputy Collector (TW), Polavaram the respondents (Revision Petitioners) filed an appeal before the Collector and Agent to the Government, West Godavari District, Eluru and also filed stay petition to grant stay on the operation of the order issued in S.R.No.67/2006, dt:29-11-2006. However pending disposal of the appeal in the court of Agent to Government Sri Samayamanthula Krishna Rao and 2 others filed writ petition No.20445 of 2007 in the Hon'ble High Court of Andhra Pradesh, Hyderabad against the Special Deputy Collector (TW), Kota Ramachandrapuram and others. The Hon'ble High Court of Andhra Pradesh, while disposing the writ petition No.20445/07 dated 5-10-07 directed the 1st respondent (Special Deputy Collector (TW)) that the petitioners shall not be evicted from out of the lands in their possession pursuant to the orders assed by the Special Deputy Collector (TW) dt.29-11-06 till the appeal decided by the Agent to Government, Eluru.

5. The Agent to Government. Eluru after giving opportunity held that the appellants(revision petitioner) have not filed any burden of proof documentary evidence as reference in S.R.No.377/90 order (i.e.) either RSR extract of 1917/1993 or other connected documents as contended in the written argument of the Revision Petitioner that the land in question is on lease from Samayamanthula Krishna Rao and other on payment of makta (lease). Hence, it is clearly established that the transfer of land from non-tribe to non-tribe, contrary to the provisions of Andhra Pradesh Scheduled Areas Land Transfer Regulation 1/1959 as amended by 1/70 is proved and the appeal was dismissed by the Collector and Agent to Government, West Godavari District, Eluru in SRA.No.3/2007 (F2) dt:21-6-2008.

6. Aggrieved by the orders of Agent to Government, West Godavari Sri Thamballa Venkateswara Rao and 4 others of P.Ankampalem vg. of Jeelugumilli (M) filed a WP No.14233/08 before the Hon'ble High Court of Andhra Pradesh, Hyderabad. The High Court of AP while disposing writ petition No.14233/2008 dated 3-7-2008, directed the 1st respondent (Government. of Andhra Pradesh) to consider the revision filed by the petitioner and pass

appropriate order and passed the order that there shall be status quo with regard to possession of the land in dispute pending the revision or till the disposal of the interlocutory application filed by the petitioner before the revisional authority, which ever is earlier. Hence the Revision Petition is filed before the Government.

7. In the reference 2nd read above the Collector, West Godavari was requested to furnish the parawise remarks and connected case records and the same were furnished in the reference 3rd read above. The case was posted for hearing on 19-9-2009 and finally on 19-3-2010. The revision petitioners 1 to 3 and 5 and their counsel were present and produced the original documents and written arguments.

8. Government after examining the material evidence of documents and keeping in view of the original documents produced by the petitioner found that:--

As per the orders of Spl. Deputy Collector (TW) Polavaram in SR No.67/2006,dt.29-11-2006.---

a) On verification of the available material and records such as SR.No.377/90 to 393/90,RSR and Encumbrance Certificate, the Spl.Dy.Tahsildar, Polavaram failed to prove the lease held in between Tambala Venkatarao and Samayamantula Satyanarayana and others. No document what so ever was produced by the SDT to prove the tenancy absolutely and no scrap of paper is available with Spl. Deputy Tahsildar to prove his contentions.

b) The Spl. Deputy Collector (TW) passed orders in SR.No.67/2006 by coming to a conclusion that Thamballa Venkateswara Rao and Pilli Yedukondalu were cultivating the PS Land as Tenents, after obtaining lease, that it is nothing but transfer.

c) Thamballa Venkateswara Rao, Pilli Yedukondalu and other land owners have given their affidavits before the Agent to Government, West Godavari .District, Eluru in SRA.No.3/2007 stating that they are not the lease holders of the PS Land, they are only workers. But these Affidavits were not taken into consideration by the Agent to Government.

d) The Spl. Deputy Collector (TW) failed to enquire the persons who are treated as lease holders i.e. T.Venkateswara Rao,Nune Chandrarao,Manike Venkata Rao and Muvva Ramakrishna Rao and passed orders basing on the report of the Spl.Dy.Tahsildar, Polavaram.

e) The Spl. Deputy Collector (TW) passed orders in S.R.No.67/2006,Dt.29-11-2006, without taking the SR.No.377/90 to 393/90 (Batch cases) in to consideration. Again the SDT filed another case on the same PS Land with SR No.161/07, Dt.15-04-2008 and it was dropped as Resjudicata by taking the orders in SR.No.377/90 to 393/90 as the basis. Thus S.R.No.161/07, Dt.15-04-2008 has gone in favor of revision petitioners 3 to 5 so as to avoid Resjudicata.

f) Tambala Venkateswara Rao and Pilli Yedukondalu Appellants 1 and 2 filed affidavits stating that the Special Deputy Tahsildar wrongly obtained signatures on some empty papers. On 19-03-2010 the above persons physically appeared before this court and pleaded orally that their signatures are obtained on some empty papers. There is an element of credence in their plea.

g) This kind of file maneuvering is also observed on verification of the docket orders of the Special Deputy Collector (TW) that the case was posted on 22/11/06, 29/11/06 and finally on 18/12/2006. But the notices were issued to T.Venkateswara Rao on 28/09/06 to attend on 06-10-06 and notice dated 11-10-2006 to attend on 03-11-06. Thus notice issued dates to conduct court and the dates mentioned in original record are different and overwriting in the notices dates. Thus it indicates that no notices were served to the concerned people to call as evidence and no statements were recorded by the SDC and he merely passed orders basing on the report submitted by the Special Deputy Tahsildar along with statements recorded by him from P.Yedukondalu, M.Ramakrishna. The Special Deputy Collector, Tribal Welfare, Polavaram also failed to verify the genuinity of statement of Spl.Dy.Tahsildar by calling the individuals.

h) Technically with this kind of flaws in this case are not sustainable, as the dates of calling respondents and court conducted dates as per original records are different.

i) Finally the most important and glaring flaw observed is that the case is posted on 18/12/2006 as per original record instead of conduct hearing final orders are passed by the Special Deputy Collector (TW), Polavaram very much prior to that date i.e. on 29/11/06.

j) As per the Agent to Government order in SRA No.3/2007, dated 21-6-2008 when no opportunity was given by the Special Deputy Collector, Tribal Welfare, Polavaram in S.R.No.67/2006 to appellants 3 to 5 the Agent to Government cum District Collector, West Godavari District, Eluru ought to have held that the appellants 3 to 5 had no opportunity to put forth their contentions. The Revision Petitioners filed documents namely the Photostat copy of order in S.R.No.377/1990 to 393/1990 passed by the then Special Deputy Collector, Tribal Welfare, Kota Ramachandrapuram dated 20-10-1990 the Original of the same order was produced before the Court at the time of hearing on 19-03-2010 for perusal and on comparing the original with Photostat, it is found genuine, hence the then Special Deputy Collector, Tribal Welfare, rightly come to a conclusion in SR.No.161/2007, Dt.15-04-2008, that the Revision Petitioners 3 to 5 are owners of present disputed property covered under R.S.No.39 in an extent of Ac.8.64 cents and R.S.No.40 in an extent of Ac.25-17 cents. It is pertinent to note that the proceedings under S.R.No.377 of 1990 to 393/1990 were taken up on the petitions of the then Special Deputy Collector, Tribal Welfare, Kota Ramachandrapuram and those proceedings were culminated in favor of the appellants 3 to 5. The present proceedings are also in between the same parties in respect the same property. Therefore the present case is barred by Resjudicata under section 11 of CPC.

9. Government after careful examination of the facts and records of the case set aside the orders of Spl. Dy.Collector (TW) Polavaram in SR No.67/2006, dt.29-11-2006 and as confirmed by the Agent to Government, Eluru in SRA No.3/2007, dt:21-6-2008 hereby uphold the findings passed in S.R.No.377/90, dt.20-10-1990 of Special Deputy Collector (TW) Kota Ramachandrapuram and allowed the Revision Petition accordingly.

10. The Collector and Agent to Government, Eluru West Godavari is requested to take necessary action in the matter.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

A.K.TIGIDI,
Spl. Chief Secretary to Government.

To

The District Collector, West Godavari District, Eluru.

(With RPAD of the following Records)

1.Case SRA No.3/07 containing pp 1-170 pages only.

2.S.R No.161/07 containing pp 1-38, and

3.S.R No.67/06 containing 1-22 pages only.

The Addl. Agent to Government, Eluru, West Godavari District

The Special Dy. Tahsildar (TW), KR puram, West Godavari Dist.

S/Sri Tambala Venkateswara Rao / Pilli Edukondalu

R/o P.Ankampalem, Jeelugumilli (M) West Godavari

S/Sri Samyamanthula Satyanarayana / Samyamnanthula Krishna Rao and

Samyamanthula Veereswara Rao Sons of Sarvayya

R/o Kamayyapalem vg. Jeelugumilli (M) West Godavari

Sri Ch.Dhananjaya, Advocate,

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Arvind nagar Colony near Indira Park, Hyderabad.

Copy to the P.S. to M (TW&RAID).

SF / SC

FORWARDED:BY ORDER

SECTION OFFICER.